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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,138	07/23/2003	Gerhard N. Schrauzer	03-SCH/101	8281
22890	7590	02/01/2006	EXAMINER	
RICHARD D. CLARKE LAW OFFICE OF RICHARD D. CLARKE 3755 AVOCADO BLVD., #1000 LA MESA, CA 91941-7301			PRATT, HELEN F	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 02/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/625,138

Applicant(s)

SCHRAUZER, GERHARD N.

Examiner

Helen F. Pratt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1-6, 8-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miyamoto (JP 59022583).

Miyamoto discloses a process of making a nutritional composition by burning tree material to make ash and treating the ash with an organic acid (acetic) in amounts 6-7 times that of the ash to give a stock solution which is evaporated to dryness (powder) (abstract). Claims 1, 3 and 8 differ from the process in further treating the reacted plant ash to make a consumable mineral supplement. However, Miyamoto discloses that fruits and vegetables can be dipped into the mineral composition, which means that the mineral mixture is suitable for human consumption. Therefore, it would have been obvious to make a mineral composition as disclosed by Miyamoto.

Claims 1 and 6 further require the cited processing steps. The reference discloses that the extract is filtered, evaporated to a powder (abstract). It is noted in the specification, as on page 10 and on that not all of the claimed steps are required.

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Therefore, it is seen that not all of the steps are critical, and it would have been within the skill of the ordinary worker to use known processing steps such as homogenization and pasteurization when required. Therefore, it would have been obvious to use known processing steps as shown by the reference.

Claim 2 further requires that the composition is free from contamination. Of course, this limitation would have been within the skill of the ordinary worker since when making any nutritive composition contamination must be avoided for health reasons. Therefore, it would have been obvious to make a product, which is free of contamination.

Claim 4 further requires using an inorganic acid instead of an organic acid and claim 5 further requires mixing the inorganic acid with an organic acid. However, nothing new is seen in using an inorganic acid absent a showing of unexpected results using the inorganic acid. Therefore, it would have been obvious to use an inorganic acid in place of an organic acid.

Claim 6 further requires various processing steps. Miyamoto discloses filtering and concentration (evaporation). Crystallization is seen to have occurred, as the process is the same. Therefore, it would have been obvious to use some of the process steps as shown by Miyamoto to make the claimed product.

Claim 9 further requires that the powdered form be compressed into pill form, claim 10 requires encapsulation into gelatin capsules and claim 11, adding the composition directly to animal feed. However, nothing new is seen in treating as claimed mineral mixtures, which are routinely made into pills, or added to animal feeds.

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Therefore, it would have been obvious to treat as claimed because these forms of using minerals are common.

Claim 12 further requires adding vitamins, nutraceuticals and or herbs with the mineral mix. Attention is invited to *In re Levin*, 84 USPQ 232 and the cases cited therein, which are considered in point in the fact situation of the instant case, and wherein the Court stated on page 234 as follows:

This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coaction or cooperative relationship between the selected ingredients which produces a new, unexpected, and useful function. *In re Benjamin D. White*, 17 C.C.P.A (Patents) 956, 39 F.2d 974, 5 USPQ 267; *In re Mason et al.*, 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 USPQ 221. Therefore, it would have been obvious to add other ingredients to the claimed mineral composition.

Claim 13 further requires that the mineral composition be in solution form. Miyamota discloses the claimed mineral mixture in solution form (abstract). Therefore, it would have been obvious to use the mineral mixture in solution form as disclosed by Miyamoto.

Nothing new is seen as in claim 14 in the use of other additives, which are routinely added to mineral supplements or in the addition of Vitamin D as in claim 15 as it is routinely used with calcium to enhance absorption. Therefore, it would have been obvious to add vitamin D3 to a mineral supplement as it is routinely used with calcium to enhance absorption.

Claim 16 further requires the use of the plant ash in suspension and claim 17 an aqueous form. The reference to Miyamota discloses mixing the mineral powder to make a suspension. However, a suspension has been disclosed because the mineral powder was mixed with water (abstract). Therefore, it would have been obvious to make a suspension in aqueous form as claimed.

Claim 18 further requires a colloidal suspension. Such a suspension could be milk. It is well known to fortify milk composition with minerals. Therefore, it would have been obvious to add colloidal suspensions to the claimed composition.

### ***Allowable Subject Matter***

Claims 19 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### **ARGUMENTS**

Applicant's arguments filed 12-5-2005 have been fully considered but they are not persuasive. Applicants argue that the reference makes a different product than that of the reference because there is no teaching to isolate and process the plant ash to make a supplement. However, this is not seen, as applicants specification does not

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disclose any particular steps of isolating, but the use of the whole reacted composition of plant ash and acids (0026). If the mineral supplement is to be tableted it can be isolated as solids by evaporating (0026). The reference also evaporates to a powder.

Applicants argue that since fruits and vegetables can be dipped that this is not a method for making a consumable product. This is not seen as eating the dipped fruit or vegetable means that the product is consumable.

Applicant's claims do not exclude the use of alkali, and the food that is dipped is a fruit or vegetable which are generally meant for consumption.

Applicants argue as to amounts of minerals to be absorbed. However, no amounts are seen in the claims to differentiate them.

As to claim 2, location is not considered in the claims. It is within the skill of the ordinary worker to make foods free of the claimed pesticides, etc.

Applicants argue as to claim 4 that one can't use all inorganic acids and that acids may react synergistically as in claim 5. However, applicants do not require any particular inorganic acids or organic acids, and no evidence of unexpected results is seen in using particular acids. Certainly, it is within the skill of the ordinary worker to use food safe inorganic acids.

As to claim 6, applicants specification, no where requires all of those steps, so it is assumed that only some of them are used. Certainly, as they are all well known steps, it would have been obvious to use the ones required to make a particular product.

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Nothing is seen as to claim 8 and 9 that the product of claims 8 and 9 is not the same as that of Miyamoto who also makes a powdered form (abstract).

Nothing new is seen in the use of pills, tablets, or powders as in claims 9-11 or as in claim 12 in further mixing vitamins or minerals, as vitamin and mineral supplements are well known.

Solutions are certainly shown by the reference as in claim 13 (abstract).

Certainly, nothing new is seen in the addition of well known ingredients.

Attention is invited to *In re Levin*, 84 USPQ 232 and the cases cited therein, which are considered in point in the fact situation of the instant case, and wherein the Court stated on page 234 as follows:

This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coaction or cooperative relationship between the selected ingredients which produces a new, unexpected, and useful function. *In re Benjamin D. White*, 17 C.C.P.A (Patents) 956, 39 F.2d 974, 5 USPQ 267; *In re Mason et al.*, 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 USPQ 221.

The further claims have been shown by the reference or are obvious variations.



Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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Hp 1-26-06

  
HELEN PRATT  
PRIMARY EXAMINER